IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

CHAMBER SUMMONS No. 630 of 2005
IN
EXECUTION APPLICATION No.42 of 2005
IN
SUMMARY SUIT No. 1344 of 2002.

Drishti Developers
Pvt.Ltd. **..Plaintiff.**

V/s.

Century Gases & Petrochemicals
Ltd. **..Defendant.**

And

Pooja G. Joshi & Anr. .. Applicants.

Mr. J. K. Hegde for plaintiff.

Mr. Snehal Shah i/b. Y. R. Shah for
Applicant.

CORAM:S.C.DHARMADHIKARI,J.

DATED: 19TH JULY, 2006.

P.C.:-

1] This Summary Suit was filed on 18th April, 2002.

2] The following facts are not disputed.

That in the Summary Suit, a Summons for Judgment was taken out by the plaintiff/decree

holder being Summons for Judgment No.575 of 2002. By an order passed on 19th March, 2004, this summons for Judgment has been made absolute and a decree for the sum of Rupees Six Lakhs was passed in favour of the plaintiff/decree holder herein.

3] In the affidavit which is filed in support of this Chamber Summons my attention is invited to Exh.E, page 31, where a copy of the winding up order passed by the Karnataka High Court on 12th April, 2002 in Company Petition No. 174 of 1999, is annexed.

4] The order was passed by the Court on 12th April, 2002 directing that Company be wound up. The Company before the Karnataka High Court is the defendant in this Summary Suit.

5] Mr.Hegde appearing for the decree holder makes a grievance that when the summons for Judgment was argued before this Court, as also during the course of hearing of Summary Suit, the fact that the defendant/Judgment Debtor has directed to be wound up, was suppressed.

It is in these circumstances, that this Court proceeded to pass a decree for Rupees Six Lakhs. There was an order of winding up of the defendant on the day the Summons for Judgment was decided. In these circumstances, there is much substance in the contention of the applicants that the order passed by this Court is ex-facie erroneous and illegal.

6] Mr. Hegde, appearing for the decree holder states that the decree holder be given time to take out appropriate proceedings including lodging of claim before the Official Liquidator appointed by the Karnataka High Court. He also seeks time to move the Karnataka High Court or the Official Liquidator and requesting it to take appropriate steps so that possession of all assets and properties of Company in winding up, is taken over by him. Equally, it is open to the Decree holder to take out appropriate proceedings in the Summary Suit if it is pending.

7] Such liberty and remedies are always

open. But, prima facie, when an order of winding up was passed then this Court could not have proceeded in the matter without the Official Liquidator being brought on record to represent the Judgment Debtor in the Summary Suit.

8] Therefore, the attachment levied in pursuance of such a decree cannot be held to be valid. The attachment is liable to be raised.

9] Mr. Hegde seeks leave also to take out appropriate proceedings against the applicant for breach of the order and direction of this Court. In my view, that liberty is always there and any order passed on this Chamber Summons would not constitute bar in either instituting them or prosecuting the same. All contentions of both sides in that behalf are expressly kept open. Chamber Summons is made absolute in terms of prayer clause (a). However, the applicants should not alienate, encumber, part with possession or create third party rights in respect of the assets and properties mentioned in the Schedule annexed

to the Chamber Summons for a period of six weeks from today.

10] In the circumstances, there shall be no order as to costs.

11] It is also clarified that attachment is raised because of the peculiar facts brought to my notice with regard to the validity and legality of the decree in the light of the winding up order. The contentions with regard to right and title of the applicants in the properties mentioned in the Schedule need not be decided, once I am satisfied that the attachment cannot be continued because the decree being erroneous and illegal.

[S.C. DHARMADHIKARI,J]